

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

TRACEY MARTINEZ,  
Plaintiff.

vs.  
KOHL'S CORPORATION,  
Defendant

Case No.: 1:19-cv-00484

## **COMPLAINT AND JURY DEMAND**

## **COMPLAINT**

Plaintiff, TRACEY MARTINEZ (“Plaintiff”), by and through her undersigned counsel, hereby sues Defendant, KOHL’S CORPORATION (“Defendant”), alleging as follows:

## I. INTRODUCTION

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, and for Defendant's unlawful conduct in violation of the Texas Debt Collection Act ("TDCA"), Tex. Fin. Code Ann. §§ 392 *et seq.*

2. The TCPA was legislated to prevent companies like KOHL'S

1 CORPORATION from invading Americans' privacy by stopping abusive "robo-  
2 calls." The legislative history "described these calls as 'the scourge of modern  
3 civilization, they wake us up in the morning; they interrupt our dinner at night; they  
4 force the sick and elderly out of bed; they hound us until we want to rip the telephone  
5 out of the wall.' 137 Cong. Rec. 30, 821 (1991). Senator Hollings presumably  
6 intended to give telephone subscribers another option: telling the autodialers to  
7 simply stop calling." Osorio v. State Farm Bank, F.S.B., 746 F.3d 1242, 1255-56  
8 (11th Cir. 2014).

## 12                   **II. JURISDICTION AND VENUE**

13                   3. Jurisdiction of this Court arises under 28 U.S.C. §1331 and 47 U.S.C. §  
14                   227(b)(3). See Mims v. Arrow Financial Services, LLC, 565 U.S. 368 (2012)  
15 holding that federal and state courts have concurrent jurisdiction over private suits  
16 arising under the TCPA.

17                   4. Venue is proper in the United States District Court for the Western District  
18 of Texas pursuant to 28 U.S.C § 1391(b)(2) because Plaintiff resides within this  
19 District and a substantial part of the events or omissions giving rise to the herein  
20 claims occurred within this District.

21                   5. The violations described in this Complaint occurred in Texas.

## 22                   **III. PARTIES**

23                   6. Plaintiff is a natural person residing in Guadalupe County, in the city of

1 Marion, Texas, and is otherwise *sui juris*.

2       7. Defendant is a nationally chartered bank, doing business in the state of  
3 Texas, with its principal place of business located in Menomonee Falls, Wisconsin.  
4 Defendant is a “person” as defined by 47 U.S.C. §153 (39).

5       8. At all times relevant to this Complaint, Defendant has acted through its  
6 agents, employees, officers, members, directors, heir, successors, assigns,  
7 principals, trustees, sureties, subrogees, representatives and insurers.  
8  
9

10                          **IV. FACTUAL ALLEGATIONS**

11       9. Defendant placed collection calls to Plaintiff seeking and attempting to  
12 collect on alleged debts incurred through purchases made on credit issued by  
13 Defendant.

14       10. Plaintiff is the “called party.” See Breslow v. Wells Fargo Bank, N.A., 755  
15 F.3d 1265 (11th Cir. 2014).

16       11. Defendant placed collection calls to Plaintiff’s cellular telephone at phone  
17 number (210) XXX-0724.

18       12. Defendant placed collection calls to Plaintiff from various telephone  
19 numbers including, but not limited to, (262) 704-8208, (262) 704-9378, (210) 944-  
20 1998, (210) 640-3049 and (210) 640-3047.

13. Upon information and belief, based on the number, frequency and timing of the calls, and on Defendant's prior business practices, Defendant's calls were placed with an automatic telephone dialing system.

14. Defendant used an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1), to place telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed by Plaintiff.

15. Defendant's calls were not for emergency purposes, which would be excepted by 47 U.S.C. § 227(b)(1)(A).

16. Defendant's calls were placed to a telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §227(b)(1).

17. Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

18. On or about November 9, 2018, Plaintiff spoke with a representative of Defendant's company at phone number (262) 704-8208, and told Defendant to stop calling her cellular telephone.

19. During the November 9, 2018 conversation, Plaintiff gave Defendant representative (“Amber”) her full name in order to assist Defendant representative

in identifying her and accessing her accounts before asking Defendant to stop calling her cellular telephone.

20. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular telephone and/or to receive Defendant's calls using an automatic telephone dialing system in her conversation with Defendant's representative on November 9, 2018.

21. Despite Plaintiff's request to cease, Defendant continued to place calls to Plaintiff's cellular phone after November 9, 2018.

22. Despite Plaintiff's request that Defendant cease placing automated collection calls to Plaintiff via the use of an automatic telephone dialing system, Defendant continued to place at least thirty-six (36) telephone calls via the use of an automatic telephone dialing system to Plaintiff's cellular telephone.

23. Defendant placed the great number of telephone calls to Plaintiff with the sole intention of harassing Plaintiff in such a manner so as to cause Plaintiff to pay the alleged debt claimed by Defendant, even when Plaintiff admittedly had impaired ability to pay. This telephonic harassment caused Plaintiff considerable anxiety and emotional distress.

**FIRST CAUSE OF ACTION**  
**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
**PROTECTION ACT - 47 U.S.C. §227(b)(3)(B)**

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

26. As a result of Defendant's negligent violations of 47 U.S.C. §227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

27. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the future.

WHEREFORE, Plaintiff, TRACEY MARTINEZ, respectfully requests judgment be entered against Defendant, KOHL'S CORPORATION, as follows:

a. Awarding Plaintiff statutory damages of five hundred dollars (\$500.00) multiplied by the number of negligent violations of the TCPA alleged herein, to wit: thirty-six (36) for a total of eighteen thousand dollars (\$18,000.00);

b. Awarding Plaintiff actual damages and compensatory damages according to proof at time of trial;

c. Granting Plaintiff such other and further relief as may be just and proper.

## **SECOND CAUSE OF ACTION**

1           **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
2           **CONSUMER PROTECTION ACT**  
3           **47 U.S.C. § 227(b)(3)(C)**

4  
5       28. Plaintiff repeats and incorporates by reference into this cause of action the  
allegations set forth above at Paragraphs 1-23.

6  
7       29. The above listed acts and omissions of Defendant constitute numerous and  
multiple knowing and/or willful violations of the TCPA, including but not limited  
8  
9       to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

10  
11      30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §  
227 *et seq.*, Plaintiff is entitled an award of one thousand five hundred dollars  
12  
13      (\$1,500.00) in statutory damages for each and every violation, pursuant to 47 U.S.C.  
14  
15      § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

16  
17      31. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the  
future.

18  
19      WHEREFORE, Plaintiff, TRACEY MARTINEZ, respectfully requests  
20 judgment be entered against Defendant, KOHL'S CORPORATION, as follows:

21  
22      a.     Awarding Plaintiff statutory damages statutory damages of one  
23 thousand five hundred dollars (\$1,500.00) multiplied by the number of knowing  
24 and/or willful violations of TCPA alleged herein, to wit: thirty-six (36) for a total of  
25 fifty-four thousand dollars (\$54,000.00);

26  
27      b.     Awarding Plaintiff actual damages and compensatory damages

according to proof at time of trial;

c. Granting Plaintiff such other and further relief as may be just and proper.

## **JURY TRIAL DEMAND**

Plaintiff demands a jury trial on all issues so triable.

Dated: May 2, 2019

RESPECTFULLY SUBMITTED,

By: /s/Dorothy Butler Lawrence  
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